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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON

5 UNITED STATES OF AMERICA,
6 Plaintiff,

7 -vs-

8 GERARDO BARRAZA ZAZUETA (1),
9 a/k/a Joel Rivera,
10 MARIA GODINEZ (2),

11 Defendants.

12 No. CR-13-2081-WFN
13 ORDER

14 An evidentiary hearing and pretrial conference was held September 30, 2013.
15 Defendant Barraza Zazueta, who is in custody, was present and represented by Rebecca
16 Pennell; Defendant Godinez, who is not in custody, was present and represented by
17 Richard Smith; Assistant United States Attorney Thomas Hanlon represented the
18 Government.

19 The Court addressed pending pretrial motions. The Government informed the Court
20 that additional discovery had recently been provided to Defendants and based on that
21 discovery, the Government intends to seek a superseding indictment. The Government
22 already provided transcripts of grand jury testimony. Defendants requested that the
23 Government preserve rough investigator notes, but acknowledged that those notes need not
24 be disclosed at this time. The Government addressed the Defendants' Motions to Sever
25 and indicated that based on the substance of the new discovery that the Government joins
26 the severance motions. The Court severed the cases for trial.

27 The Government presented three witnesses regarding Defendants' Motions to
28 Suppress, Officer Posada, Officer Sanchez, and Agent Walsh. Due to time constraints,
29 Agent Walsh's testimony did not conclude and counsel were unable to make arguments.
30 Mr. Smith indicated that he may present one witness in support of his Motion to Suppress
31 and estimated that an additional hour and a half will be needed to complete the evidentiary

1 hearing. The Court has reviewed the file and Defendant's Motions and is fully informed.
2 This Order is entered to memorialize and supplement the oral rulings of the Court.
3 Accordingly,

4 **IT IS ORDERED** that:

5 1. Defendant Godinez's Motion to Join in all Pretrial Motions and in All
6 Memoranda of Authorities Filed by Co-Defendant Absent Election Out, filed on
7 September 13, 2013, **ECF No. 63**, is **DENIED AS MOOT**. Defendants are already
8 joined in their pretrial motions unless they elect to opt out or the subject matter of
9 co-Defendant's does not pertain to them.

10 2. Defendant's Motion for Discovery, filed September 13, 2013, **ECF No. 57**, is
11 **DENIED AS MOOT**.

12 3. Defendant's Motion for Production of 404(b) and 609 Evidence, filed
13 September 13, 2013, **ECF No. 64**, is **DENIED AS MOOT**.

14 4. Defendants' Motion in Limine, filed September 13, 2013, **ECF No. 58**, is
15 **RESERVED** and will be addressed at the final pretrial conference.

16 5. Defendant Barraza Zazueta's Motion to Sever Defendants, filed September 13,
17 2013, **ECF No. 59**, is **GRANTED**.

18 6. Defendant Godinez's Motion to Sever, filed September 13, 2013, **ECF No. 62**,
19 is **GRANTED**.

20 7. The trial date of October 21, 2013, is **STRICKEN** and **RESET** as follows:

21 (a) **October 28, 2013, at 10:00 a.m., in Yakima, Washington** for **Defendant**
22 **Barraza Zazueta (1)**; and

23 (b) **November 6, 2013, at 10:00 a.m., in Yakima, Washington** for **Defendant**
24 **Godinez (2)**.

25 8. The new trial dates are within each Defendant's speedy trial time out.

26 9. The final pretrial conference and motion hearing is likewise **RESET** as follows:

27 (a) **October 28, 2013, at 10:00 a.m., in Yakima, Washington** for **Defendant**
28 **Barraza Zazueta (1)**; and

(b) November 6, 2013, at 10:00 a.m., in Yakima, Washington for Defendant Godinez (2).

10. Trial briefs, motions in limine, requested voir dire and a set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before **October 22, 2013**.

Jury instructions should only address issues that are unique to this case and shall include instructions regarding the elements of each claim, any necessary definitions and a proposed verdict form. The Joint Proposed Jury Instructions shall include:

- (a) The instructions on which the parties agree; and

- (b) Copies of instructions that are disputed (i.e., a copy of each party's version of an instruction upon which they do not agree). All jury instructions must be submitted in the most current edition of the Ninth Circuit Manual of Model Jury Instructions and may be referred to by number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements of LR 51.1(c).

Each party shall address any objections they have to instructions proposed by any other party in a memorandum. The parties shall identify the specific portion of any proposed instruction to which they object and shall elaborate the basis for the objection. Objections asserting that an instruction sets forth an incorrect statement of law shall describe the legal authority that supports this objection. Failure to file an objection and supporting argument may be construed as consent to the adoption of an instruction proposed by another party.

11. The parties are requested to submit courtesy copies of witness and exhibit lists to the Court no later than **12:00 noon the Thursday before trial**.

12. The evidentiary and motion hearing shall be **CONTINUED to October 21, 2013, at 1:00 p.m., in Yakima**, Washington. Defendants' Motions to Suppress, ECF Nos. **60 and 61**, shall be heard at that time.

13. Indigent Defendant's requests for issuance of subpoenas and payment of costs and fees for trial witnesses shall be filed no later than ten days before trial, excluding weekends and holidays.

1 14. Defendants' Motions to Suppress Statements, filed September 13, 2013, **ECF**
2 **Nos. 60 and 61**, are **RESERVED**.

3 15. All time from the filing of Defendants' Motions to Sever on September 13, 2013,
4 to the date of the hearing on September 30, 2013, is **EXCLUDED** for speedy trial
5 calculations pursuant to 18 U.S.C. § 3161(h)(1)(D).

6 The District Court Executive is directed to file this Order and provide copies to
7 counsel.

8 **DATED** this 3rd day of October, 2013.

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12 10-01-13

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE